

MONTANA ASSOCIATION OF PLANNERS  
Legislative Committee, 2013 Legislative Session

**Summary comments regarding: SB 324, AN ACT GENERALLY REVISING SUBDIVISION LAWS RELATED TO LEASE OR RENT; PROVIDING FOR THE REGULATION OF BUILDINGS CREATED FOR LEASE OR RENT ON A SINGLE TRACT; PROVIDING EXEMPTIONS FROM REVIEW FOR CERTAIN BUILDINGS; REQUIRING CERTAIN BUILDINGS CREATED FOR LEASE OR RENT TO BE REVIEWED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY OR LOCAL REVIEWING AUTHORITY FOR SANITATION COMPLIANCE; AUTHORIZING A LOCAL GOVERNMENT TO REVIEW THE CREATION OF BUILDINGS FOR LEASE OR RENT IN CERTAIN CASES; PROVIDING MINIMUM REQUIREMENTS FOR LOCAL GOVERNMENT REGULATIONS; AUTHORIZING THE ADOPTION OF ADDITIONAL CRITERIA FOR THE LOCAL REVIEW OF CERTAIN BUILDINGS; PROVIDING DEFINITIONS; PROVIDING PENALTIES; REVISING LOCAL SUBDIVISION REGULATIONS; AMENDING SECTIONS 76-3-103, 76-3-504, 76-4-103, 76-4-125, 76-6-203, AND 76-7-203, MCA; REPEALING SECTIONS 76-3-202, 76-3-204, AND 76-3-208, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.**

**House Local Government Committee: March 21, 2013**

The Montana Association of Planners (MAP) appreciates the effort on the part of Sen. Rosendale, other Legislators, and organizations to deal with the subdivisions for rent or lease issue (we call them SLRs). SLRS had an entirely new twist following the release of the AG's Opinion No. 5, Volume 54 in January, 2012 and many communities have found the situation difficult to address.

MAP has been participating in the process and progress of SB324 through the session and supports the overall goal of the bill to address SLR for communities across Montana. We think many elements of the bill will work for local governments and communities in Eastern Montana as well as around the rest of the state.

However, MAP would like to point a few areas in the bill that we still believe need additional work and we are proposing some amendments to help make the bill even better and clearer for the public, elected officials, and planners to implement.

**1) Exemption or Conformity and "Grandfathering" Issue - NEW SECTION. Section 2.** Buildings for lease or rent -- exemptions. (1) Building was in existence or under construction before (the effective date of this Act)

MAP is very concerned that this exemption or something similar, such as may be proposed to incorporate HB 499 provisions, will automatically legalize any number of developments which do not conform to current law and exempt them from the proposed Act. "Grandfathering" is a term that has been used by many to describe the purpose of this provision, but in fact "grandfathering" is a mechanism whereby uses that were legal under a previous law are allowed to continue as legal uses under a new law that may regulate the uses differently or prohibit them entirely.

The NEW SECTION. Section 2. (1) would stop any legal action against an existing RV park, mobile home court, or other buildings for lease or rent that did not comply with or had not undergone review as a subdivision or as a legitimate exemption under 76-3-202 or 204, MCA. This provision will have far-reaching statewide implications, particularly for eastern Montana, which is currently dealing with a proliferation of illegal RV parks as a result of demand for oil

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and gas-related worker housing. Richland County, for example, is in the process of enforcing compliance with the existing law but this proposed provision in this Act will stop those efforts dead and could likely promote a flurry of development that will neither comply with current law or the proposed Act between the time the Act is passed and its proposed effective date of September 2013. MAP has no amendment to offer at this time but wants the Committee to seriously consider this issue in the bill.

**2) Public notice and review processes.** MAP sees no mechanism for a local public process included in the new law for 4 or more buildings/units. It is not clear to us that local governments can properly provide for open, public processes to review subdivisions for rent or lease as has been done under the current Subdivision and Platting Act for decades. The new law gives 60 days to complete the review as outlined in New Section 6. Under this 60 days, a local community would normally conduct staff and applicant review meetings, hold open meetings at the Planning Board level if applicable, and eventually bring the application to the governing body for action at a public meeting. Specifically, this would seem to apply to reviews outlined in New Section 4 Buildings for lease or rent -- FOUR or more buildings. It would seem that the bill needs an amendment to clarify that local governments have the obligation and authority to develop public processes similar to what is now allowed under the MSPA. MAP is offering an amendment (*See Amendment #1 on the attached sheet*) and encourages the Committee to consider the issue.

**3) Fines and Penalties.** A single \$500 fine seems inadequate and not a useful tool for local governments to address subdivision for rent or lease violations. MAP suggests amending New Section 8 to read the similar to the current 76-3-105 language in the MSPA with modifications for the rent or lease nature of the new law. This gives local governments the same tools they have under other subdivision regulations to address violations. *See Amendment #2 on the attached sheet.*

**4) Zoning reference to New Section 4** – New Section 2 (2) states that the building is in conformance with applicable zoning regulations adopted pursuant to Title 76, chapter 2, parts 1 through 3, provided that the zoning contains the elements of [New Section 4]. MAP understands the need to tie the zoning enacted to the subdivisions for rent or lease so that communities do not enact zoning that has no association with these subdivisions and then tries to use it to regulate them. But MAP does not believe that the items in Section 4 clearly fit as elements in zoning. The list in New Section 4 includes: property boundaries; onsite and adjacent offsite streets, roads, and easements; geographic features; existing septic tanks and drainfields; and existing wells; and existing and proposed buildings. Zoning is tied to uses on a property more than the physical characteristics of the site or the road network. MAP proposes that New Section 2 (2) be amended to better tie rent or lease uses to the zoning. *See Amendment #3 on the attached sheet.*

**5) Purpose Statement** - This new law needs a clearly stated **Purpose**. The super-majority requirement may keep jurisdictions from "going too far" beyond what is authorized in the new law, but all the new law really has for a purpose is in the Whereas section-- *to provide an alternative to subdivision for lease or rent*. There is nothing about the purposes of protecting public health and safety, etc., that backs up the current laws for subdivision review and is at the heart of any regulation of land use and development. MAP suggests that a Purpose for this new law be crafted out of the current Purpose in 76-3-102. *See Amendment #4 on the attached sheet.*

# MAP Proposed Amendments to SB324

House Local Government Committee  
March 21, 2013

## Amendment #1 - Public notice and review processes.

NEW SECTION. Section 4. Buildings for lease or rent -- ~~six~~ **FOUR** or more buildings -- regulations. (1) A governing body shall adopt regulations for the administration and enforcement of the creation of ~~six~~ **FOUR** or more buildings for lease or rent on a single tract.

(2) The regulations adopted pursuant to this section must, at a minimum:

(a) list the materials that must be included in an application for the creation of ~~six~~ **FOUR** or more buildings for lease or rent;

(b) require a description of:

(i) property boundaries;

(ii) onsite and adjacent offsite streets, roads, and easements;

(iii) geographic features;

(iv) existing septic tanks and drainfields; ~~and~~

(V) EXISTING WELLS; AND

~~(v)~~(VI) existing and proposed buildings;

(c) require adequate water supply and sewage and solid waste disposal facilities;

(d) require an assessment of potential significant impacts on the surrounding physical environment and human population in the area to be affected, including conditions, if any, that may be imposed on the proposal to avoid or minimize potential significant impacts identified;

(e) require adequate emergency medical, fire protection, and law enforcement services;

(f) require access to the site;

(g) comply with applicable flood plain requirements; and

(h) establish procedures for public notice and comment prior to the governing body's decision that at a minimum require at least one public hearing held by the governing body on an application for six (6) or more units. Notice of the hearing must be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing. The subdivider, each property owner of record whose property is immediately adjoining

the tract of land on which the proposed development will be constructed must also be notified of the hearing by registered or certified mail not less than 15 days prior to the date of the hearing.

(3) Prior to adopting regulations pursuant to this section, the governing body shall provide an opportunity for public hearing and comment on the proposed regulations. Notice of the public hearing must be published as provided in 7-1-2121 if the governing body is a county commission or as provided in 7-1-4127 if the governing body is a city commission or a town council and must be posted not less than 30 days before the public hearing in at least five public places, including but not limited to public buildings. Public comment must be addressed before the regulations are adopted.

#### **Amendment #2 - Fines and Penalties.**

NEW SECTION. Section 8. Violations -- penalties. (1) If any building is created in violation of [sections 1 through 8], the governing body may, in addition to assessing a fine or penalty per section (3), initiate an action to:

\_\_\_ (a) prevent the unlawful creation of the building;

\_\_\_ (b) restrain, correct, or abate a violation; or

\_\_\_ (c) prevent the occupancy of the building.

\_\_\_ (2) For the purposes of enforcing the provisions of [sections 1 through 8], the governing body shall attempt to obtain voluntary compliance from the landowner at least 30 days prior to initiating an action for a violation of [sections 1 through 8].

\_\_\_ (3) Any person who violates any provision of this chapter or any local regulations adopted pursuant thereto shall be guilty of a misdemeanor and punishable by a fine of not less than \$100 or more than \$500 or by imprisonment in a county jail for not more than 3 months or by both fine and imprisonment. Each sale, lease, or transfer of each separate parcel of land or building or unit in violation of any provision of this chapter or any local regulation adopted pursuant thereto shall be deemed a separate and distinct offense.

#### **Amendment #3 - Zoning reference to New Section 4**

NEW SECTION. Section 2. (2) The building is in conformance with applicable zoning regulations adopted pursuant to Title 76, chapter 2, parts 1 through 3, provided that the zoning contains the elements of [section 4]; or addresses buildings for rent or lease as defined in this [chapter?part?]

#### **Amendment #4 - Purpose Statement**

MAP suggests that a Purpose for this new law be crafted out of the current Purpose in 76-3-102 to read something like this:

- Statement of purpose.** It is the purpose of this chapter to:
- (1) promote the public health, safety, and general welfare by regulating the subdivision for rent or lease of land;
  - (2) prevent overcrowding of land;
  - (3) lessen congestion in the streets and highways;
  - (4) provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements;
  - (5) require development in harmony with the natural environment;
  - (6) promote preservation of open space;
  - (7) promote effective and efficient provision of public services; and
  - (8) protect the rights of property owners